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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act relieving the office of the state public defender from assigning counsel in dependent neglect proceedings; amending sections 41-3-425, and 47-1-104, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

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(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for:

(a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

~~(4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."~~

{Internal References to 41-3-425:

41-3-422 41-3-422 41-3-422 41-3-423
41-3-432 47-1-104 47-1-104 }

Section 2. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1)

There is a statewide public defender system, which is

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required to deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order an office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a

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determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;~~

~~(iiiiv)~~ for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(v±) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vi±) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

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(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(~~viii~~) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(ix) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

~~(i) as provided for in 41-3-425;~~

(i) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(ii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

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(~~iii~~^{iv}) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-232;

(iv) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(~~v~~^{vi}) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(~~vi~~^{vii}) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(~~vii~~^{viii}) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5) (b), a public defender may not be assigned to act as counsel for a child or youth, parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child

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Welfare Act, as provided in 41-3-425, or as a
court-appointed special advocate or guardian ad litem in a
proceeding under the Montana Youth Court Act, Title 41,
chapter 5, or in an abuse and neglect proceeding under
Title 41, chapter 3.

(b) A private attorney who is contracted with under
the provisions of 47-1-216 to provide public defender
services under this chapter may be appointed as a
court-appointed special advocate or guardian ad litem in a
proceeding described in subsection (5)(a) if the
appointment is separate from the attorney's service for the
statewide public defender system and does not result in a
conflict of interest."

{Internal References to 47-1-104:

47-1-215 }

-END-